

Loan File Reunderwriting Protocol Status Report

Via ECF (S.D.N.Y. and C.D. Cal.) and Email (D. Kan.)

August 21, 2015

The Honorable Denise L. Cote
United States District Court for the Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

The Honorable John W. Lungstrum
The Honorable James P. O'Hara
United States District Court for the District of Kansas
500 State Avenue, Suite 517
Kansas City, KS 66101

The Honorable George H. Wu
United States District Court for the Central District of California
312 North Spring Street
Los Angeles, CA 90012-4701

Re: *NCUA v. Morgan Stanley & Co.*, No. 13-6705 (S.D.N.Y.) and related actions

Dear Judges Cote, Lungstrum, Wu, and O'Hara:

Pursuant to § (g) of the Loan File Reunderwriting Protocol ("LFRP") (ECF No. 100), and the Courts' July 14, 2014 Order (ECF No. 174) and the Courts' December 12, 2014 Order (ECF No. 230),¹ the parties respectfully submit this status report "as to identification and production by Defendant Groups and third parties of Loan Files and Guidelines for the Sampled Loans, and as to the status of above-described stipulations." As indicated in our submission dated June 26, 2015, the parties have sufficiently completed the processes encompassed by § (g) of the LFRP for the Sampled Loans for all of the RMBS certificates in the actions in the Central District of California and in the Southern District of New York, as well as in the Morgan Stanley, Nomura, Wachovia, RBS, and Novastar actions in the District of Kansas. This status report is limited to the Barclays, Credit Suisse, and UBS (collectively, "Defendants") actions in the District of Kansas for which certain claims were reinstated.²

I. Collection of Loan Files and Guidelines

A. Defendants' Productions of Loan Files and Guidelines. Pursuant to §§ (b) and (c) of the LFRP, Defendants have identified the Loan Files and Guidelines for the Sampled Loans in their possession, custody, or control that they expect to produce to NCUA. Except for

¹ Unless otherwise noted, ECF references are to *NCUA v. Morgan Stanley & Co.*, No. 13-6705 (S.D.N.Y.).

² Eleven certificates were reinstated against Barclays; twelve certificates were reinstated against Credit Suisse; and ten certificates were reinstated against UBS. *See NCUA v. Barclays Capital, Inc.*, 785 F.3d 387 (10th Cir. 2015); *NCUA v. UBS Sec., LLC*, 2015 WL 3407863 (D. Kan. May 27, 2015).

certain RMBS Certificates that were recently reinstated (“Reinstated Certificates,” in contrast to the pre-existing “Original Certificates”), Defendants reasonably believe that they have produced all Loan Files and Guidelines for the Sampled Loans in their possession, custody, or control that they expect to produce to NCUA. With respect to the Reinstated Certificates, Defendants have completed their production of Loan Files and Guidelines for the Sampled Loans in their possession.³

B. NCUA’s Subpoenas for Loan Files and Guidelines. NCUA has issued approximately 60 subpoenas to third parties seeking Loan Files and Guidelines for the Sampled Loans with respect to the Reinstated Certificates. To date, NCUA has collected loan file documents relating to approximately 3,396 of the 5,600 Sampled Loans for the Reinstated Certificates. NCUA has also collected numerous potentially applicable underwriting guidelines. NCUA is processing, Bates stamping (if necessary), and reproducing these documents to Defendants. As of this report, NCUA has produced to Defendants all documents relating to loan files and underwriting guidelines that were produced by third parties on or before August 12, 2015.⁴ NCUA continues to meet and confer with third parties regarding outstanding loan files and underwriting guidelines.

C. Defendants’ Subpoena for Loan Files and Guidelines. Defendants have not issued subpoenas seeking loan files or underwriting guidelines.

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The Appendix provides the status of the parties’ efforts to stipulate to the loan files and underwriting guidelines that have been collected on a security-by-security basis.

II. Stipulations Regarding Loan Files and Guidelines

Pursuant to §§ (e) and (f) of the LFRP, NCUA has proposed loan file and guideline stipulations to Defendants. The Appendix provides the status of these stipulations on a security-by-security basis. NCUA has not proposed stipulations for all of the collected Sampled Loans because it intends to re-underwrite only approximately 100 loans per security. The parties will cooperate in good faith regarding these stipulations and will raise any issues with the Court.

³ Credit Suisse expects to produce by September 11, 2015 Loan Files from Select Portfolio Servicing, Inc. (“SPS”), which is a distinct corporate entity from Credit Suisse with distinct document repositories that are controlled by SPS.

⁴ NCUA is still processing a third-party production it recently received from Bank of America, N.A., and will reproduce the documents in that production to Defendants next week.

Respectfully submitted,

/s/ David C. Frederick

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cc: Counsel of Record (via ECF or Email)

Appendix

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Credit Suisse (Reinstated Certificates)		ARMT 2006-1	ARMT 2006-3 (G1 &	ARMT 2007-2	FMIC 2005-3	HEAT 2005-9	HEAT 2006-7	HEAT 2006-8 (G2)	HEAT 2006-8 (all)	RASC 2007-EMX1	SAST 2006-3
Number of Sampled Loans for Which Loan Files Collected as Reported by NCUA	116/200 (58%)	96/200 (48%)	200/200 (100%)	0/200 (0%)	122/200 (61%)	190/200 (95%)	38/200 (19%)	94/200 (47%)	6/200 (3%)	200/200 (100%)	
Number of Loan File Stipulations Reached / Stipulations Proposed by NCUA	0/0	0/0	132/135 (97.7%)	0/0	0/0	0/0	0/0	0/0	0/0	0/0	
Number of Stipulations Reached as to Guideline and Matrix / Stipulations Proposed by NCUA	0/0	0/0	119/135 (88%)	0/0	0/0	0/0	0/0	0/0	0/0	0/0	
Number of Stipulations Proposed by NCUA for Which No Response Has Been Due	0	0	0	0	0	0	0	0	0	0	
Number of Sampled Loans for Which Defendant Counter-Proposed a Loan File Stipulation But No Stipulation Yet Reached	0	0	0	0	0	0	0	0	0	0	
Number of Sampled Loans for Which Defendant Counter-Proposed a Guideline or Matrix Stipulation But No Stipulation Yet Reached	0	0	2	0	0	0	0	0	0	0	

UBS (Reinstated Certificates)	CWHL 2006-OA5 (C)	CWHL 2006-OA5 (C)	MABS 2006-HE4	MABS 2006-WMC4	MARM 2006-OA2	MARM 2007-1	MARM 2007-HF1
Number of Sampled Loans for Which Loan Files Collected as Reported by NCUA	200/200 (100%)	200/200 (100%)	0/200 (0%)	200/200 (100%)	98/200 (49%)	90/200 (45%)	110/200 (55%)
Number of Loan File Stipulations Reached / Stipulations Proposed by NCUA	136/138 (98.6%)	136/138 (98.6%)	0/0	140/140 (100%)	0/0	0/0	0/0
Number of Stipulations Reached as to Guideline and Matrix / Stipulations Proposed by NCUA	138/138 (100%)	138/138 (100%)	0/0	140/140 (100%)	0/0	0/0	0/0
Number of Stipulations Proposed by NCUA for Which No Response Has Been Due	0	0	0	0	0	0	0
Number of Sampled Loans for Which Defendant Counter-Proposed a Loan File Stipulation But No Stipulation Yet Reached	0	0	0	0	0	0	0
Number of Sampled Loans for Which Defendant Counter-Proposed a Guideline or Matrix Stipulation But No Stipulation Yet Reached	0	0	0	0	0	0	0